IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.616 OF 1991

The State of Maharashtra ...Appellant.

V/s

Manohar Sakharam Karanjkar,
Adult, residing Shri Apartment,
Parabwadi, Thane. ...Respondent.

Mr. A.M. Shringarpure, APP for the appellant.

Ms. Manisha Patil with A.P. Mundargi for the respondent.

CORAM: V.M.KANADE,J.

DATE: 9th December, 2004

ORAL JUDGMENT:

1. Heard the learned APP appearing on behalf of the State. None appears for the respondent though he is served.

2. State is challenging the Judgment and Order dated 28/8/1991 passed by the Lower Appellate Court in Criminal Appeal No.53/1990 whereby the accused was acquitted of the offence punishable under section 376 of the Indian Penal Code.

3. Prosecution's case is that Jyoti Balkrishna Khilje (P.W.1) was residing in a room at Parabwadi Chawl near Mental Hospital Thane. She was less than 16 years of age. The accused was residing in the building

opposite to her school and was her aunt's son. In April 1988, the accused entered the house of Jyoti when she was alone, caught hold of her hands and, thereafter, he removed her clothes and raped her. According to the prosecution, accused raped her on 2/3 other occasions thereafter. The prosecutrix was also threatened that if she disclosed this fact to her family members, she would be killed. After the lapse of about 4 to 5 months, her aunt suspected that the prosecutrix was pregnant. She was, thereafter, taken to the Civil Hospital and the doctor informed the aunt that she was pregnant. A complaint was lodged against the accused. A charge-sheet was filed by the Investigating Agency. The Trial Court convicted the accused under section 376 and sentenced him to suffer R.I. for two years and to pay fine of Rs 100/- and, in default, to suffer R.I. for one month. Against the said Judgment and Order, the accused preferred an appeal before the Sessions Court which reversed the Order of the Trial Court and acquitted the accused.

4. The learned APP appearing on behalf of the State has taken me through the Judgment and Order of the Trial Court as also evidence which is adduced by the prosecution.

5. I have perused the evidence of P.W.1 - Jyoti Khilje. The prosecutrix has stated that the accused had entered her room some time in April 1988 from the back side wall of the room which had broken down and, thereafter, he caught hold of her hands and, thereafter, removed her clothes and raped her. She has stated in her evidence that she did not resist him, though she tried to rescue herself but was unsuccessful in that attempt. She has stated that, thereafter, accused had raped her on 2/3 occasions. It is an admitted position that the complaint was lodged after six months from the said incident. The prosecutrix has not stated the date on which the first incident took place and has not mentioned thereafter the dates or month when the accused raped her. It is difficult to believe that the family members would not notice the pregnancy of the prosecutrix as, by the time complaint was filed, the prosecutrix was six months' pregnant. Apart from the evidence of prosecutrix, there is no other evidence adduced by the prosecution to prove that the accused had committed the said crime. Prosecution has, however, examined P.W. 3 - Anita Birje who has stated that the accused had confessed to her that he had committed the said offence. It is not possible to rely upon the said testimony of P.W.3 as she has not been in a position

to state the dates when the said offence has taken place. She has conveniently stated in her evidence that she does not remember those dates. In my view, therefore, no case is made out by the prosecution and it is difficult to rely on the sole testimony of the prosecutrix particularly when she had filed a complaint after talks with the accused regarding the marriage have failed. There is no reason to interfere with the order passed by the Lower Appellate Court.

Appeal is accordingly dismissed.

V.M. KANADE, J.